

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Telecommunications Division  
Public Programs Branch**

**RESOLUTION T-16874  
September 23, 2004**

**R E S O L U T I O N**

RESOLUTION T-16874. AT&T Advice Letters 2913 and 2919. Requests: Carrier of Last Resort status in Verizon's service territory, authority to obtain subsidy reimbursement from the California High Cost Fund-B in Verizon's service territory for UNE-P based local exchange services and exemption from Primary Line Certification requirements of Resolution T-16018 in both Verizon's and SBC's service territories.

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**Summary**

AT&T Communications of California, Inc., (AT&T) by Advice Letter (AL) 2913 requests that: (1) it be designated as a Carrier of Last Resort (COLR) in Verizon's service territory pursuant to Decision (D.) 96-10-066 and that, (2) it be authorized to obtain subsidy reimbursement from the California High Cost Fund (CHCF) -B in Verizon's service territory. By AL 2919, AT&T requests an exemption from the Customer Primary Line (CPL) Certification requirements of Resolution T-16018 for customers who subscribed to AT&T's local exchange service prior to June 14, 2004 in both SBC's and Verizon's service territories.

This resolution:

- Grants COLR status to AT&T in Verizon's service territory.
- Denies AT&T authority to obtain CHCF-B subsidy in Verizon's service territory based on UNE-P without further Commission directive.
- Denies AT&T's request for an exemption from the CPL certification requirements of Resolution T-16018.
- Orders the Telecommunications Division (TD) to recommend, by resolution for Commission action, suitable remedies for AT&T's non-compliance with requirements of Resolution T-16018.
- Orders TD to inform AT&T of the status of its telecommunications public program end-user surcharge remittances to the Commission.
- Orders TD to establish and maintain a database to identify and track potential duplicate CHCF-B claims in overlapping utility service territories.

## **Background**

AT&T filed AL2913 on April 13, 2004 requesting that: (1) it be designated as a COLR in Verizon's service territory pursuant to D. 96-10-066 and that, (2) it be authorized to obtain subsidy reimbursement from the CHCF-B for providing Unbundled Network Elements – Platform (UNE – P) based local exchange service in Verizon's service territory. AT&T filed AL 2919 on April 22, 2004 requesting an exemption from the CPL certification requirements adopted in Resolution T-16018, which require all carriers that serve as a COLR to obtain certification from customers for their primary lines in order to receive subsidy from the CHCF-B. AT&T is seeking the exemption for all of its non-Universal Lifeline Telephone Service (ULTS) customers who signed up with AT&T for local service prior to June 14, 2004 in both SBC's and Verizon's service territories.

### **1. Commission Decision 96-10-066**

#### *COLR requirements*

In D. 96-10-066,<sup>1</sup> the Commission established the CHCF-B to subsidize the costs incurred by COLRs to provide affordable basic exchange service to residential customers located in designated high-cost areas. The Commission also established the criteria which a utility must meet in order to become a COLR. Decision 96-10-066, Rule 6.D. 4 of Appendix B states:

Those carriers seeking to be designated a COLR shall file an advice letter in compliance with GO 96-A, stating that the carrier intends to be designated a COLR. The advice letter shall become effective in 40 days from the date of filing, unless a protest to the advice letter is filed. The advice letter shall contain a statement of the following, which the Commission will consider in deciding whether COLR status should be granted:

- a. the facilities the carrier has in place or the arrangement that the carrier plans to enter into in order to provide basic service;
- b. the ability of the carrier to promote the goals of universal service to all customer segments throughout the COLR's service area.

#### *CHCF-B Claim requirements*

A carrier may seek subsidy from the CHCF-B after it has been designated as a COLR. Decision 96-10-066, Appendix B, Rule 6.C.2 sets forth a subsidy formula for calculating the

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<sup>1</sup> Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643 (Stats. 1994, Chapter 278).

amount of subsidy that a designated COLR would be entitled to receive from the CHCF-B. This subsidy formula was established by the Commission when the local exchange services were provisioned only on traditional network facilities owned by incumbent local exchange carriers (ILECs). The Commission, however, did not expressly limit the applicability of this subsidy formula to the traditional network facilities.

*CHCF-B Claim filing requirements*

Pursuant to D. 96-10-066, Ordering Paragraph (OP) 15b(a), the assigned ALJ issued a ruling<sup>2</sup> prescribing the monthly reports that COLRs must submit to the Commission in order to receive subsidies from the CHCF-B. The monthly reports are further supplemented by reports required by TD for information to support the CHCF-B claims. Both sets of reports are required for processing CHCF-B claims.

*Relinquishing the COLR designation*

A COLR must follow the procedure established by the Commission in order to relinquish its COLR designation. D. 96-10-066, Appendix B, Rule 6.D.7 states:

A designated COLR may opt out of its obligations in a GSA by advice letter, unless it is the only carrier remaining in the GSA, in which case it must file an application to withdraw as the COLR, and continue to act as the COLR until the application is granted or a new COLR has been designated as a result of an auction.

**2. Decision 02-02-047**

In D. 02-02-047, <sup>3</sup> the Commission adopted a settlement agreement reached between Pacific Bell (Pacific), AT&T and MCI WorldCom (MCI) on interim rates for loop UNEs for three zones in SBC's service territory. The settlement agreement also included a procedure for obtaining subsidy reimbursements from the CHCF-B for Competitive Local Exchange Carrier (CLEC) serving end-users via loop UNEs. Specifically, the procedure included how to calculate the subsidy amounts and how the subsidy claims should be made. The terms of the settlement agreement, however, were limited to SBC and its serving territory. Thus, the Commission rules adopted in this decision only apply to AT&T's CHCF-B subsidy claims in SBC's service territory.

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<sup>2</sup> Administrative Law Judge's Ruling Establishing Reporting Requirements for Carriers of Last Resort, dated April 28, 1998.

<sup>3</sup> Order Instituting Investigation on the Commission's Own Motion into De-averaging of Unbundled Network Element Rates within at Least Three Geographic Regions of the State of California Pursuant to Federal Communications Commission Rule 47.

### **3. Decision 03-03-033**

The Commission, in D. 03-03-033 <sup>4</sup> adopted interim rates for Verizon's UNEs. However, unlike D. 02-02-047, this decision did not address the issues of how the CHCF-B subsidy reimbursements should be calculated or how the claims should be made by CLECs that are serving as a COLR operating on a UNE-P platform in Verizon's service territory. <sup>5</sup>

### **4. Resolution T-16018**

In Resolution T-16018, the Commission established rules for certifying the residential primary lines for the CHCF-B program. The self-certification requirements require carriers to obtain self-certification documents from new customers and keep them for 36 months. The documents are also to be made available, upon request, to the Commission at any time. These certification forms are also required to be filed as part of the carrier's tariffs pursuant to Public Utilities Code Section 489(b) <sup>6</sup> and General Order 96-A.

### **5. AT&T Announcement**

By a letter dated July 22, 2004, AT&T notified the Commission of its plans to discontinue marketing for new customers in the residential local exchange service market in California. However, AT&T stated that it would continue to service its existing residential customers using UNE – P elements. <sup>7</sup>

### **NOTICE/PROTESTS**

Notice of AT&T's AL's 2913 and 2919 were published on the Commission calendar on April 9 and April 20, 2004, respectively.

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<sup>4</sup> Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

<sup>5</sup> There is no other Commission decision which addresses these issues.

<sup>6</sup> PU Code Section 489 (b) states:

The commission shall, by rule or order, require every telephone corporation operating within a service area, on first contact by a prospective subscriber and in subsequent contacts by the subscriber for the purpose of changing service, to fully inform the subscriber of the basic services available to the class of subscribers to which the subscriber belongs. For eligible residential subscribers, these services shall include universal lifeline telephone service. The subscriber shall be presented with information orally, in print form, or in computer data form, according to the means by which contact is established. If after a hearing, the commission finds that any telephone corporation has not provided prospective subscribers with the information required by this section, the commission may make an appropriate adjustment of the telephone corporation's rates or impose penalties pursuant to other provisions of law.

<sup>7</sup> Letter from Kenneth P. McNeely, President, AT&T – California, to Commissioners, dated July 22, 2004.

Pacific Bell Telephone Company (Pacific) d/b/a SBC California (SBC) timely filed a limited protest to AT&T AL's 2913 and 2919 <sup>8</sup>. SBC's protest was received by TD on April 30, 2004.

Verizon filed a limited protest to AT&T AL's 2913 and 2919. Verizon's protest was received by TD on May 10, 2004.

AT&T's responses to SBC and Verizon's protests were received on May 6 and 14, 2004 respectively.

## **DISCUSSION**

Pursuant to D. 95-07-054, AT&T began providing local exchange service to its customers as a CLEC in SBC's and Verizon's service territories on a resale basis. In July 1998, AT&T requested the Commission's Executive Director for an indefinite extension of time to implement the CPL certification requirements of Resolution T-16018. One reason given was that AT&T was uncertain if it would recommence offering of "Consumer Local Exchange Service" in California. <sup>9</sup> On August 24, 1998, the Executive Director granted AT&T's indefinite exemption request from complying with the CPL certification requirements of Resolution T-16018 until AT&T recommenced the offering of "Consumer Local Exchange Service" in California. The Executive Director also instructed AT&T to notify the Director of TD of its market re-entry plans and to fully comply with the operational requirements of Resolution T-16018 <sup>10</sup> upon re-entering the California residential market. AT&T indicated that it would fully comply with the terms of the CPL certification requirements when it re-entered the residential local exchange market. <sup>11</sup>

Four years later, AT&T re-entered the California local exchange market. AT&T recommenced the offering of its consumer local exchange services using UNE-P elements in SBC's service territory on August 11, 2002 and in Verizon's service territory on December 9, 2003. AT&T states, that it informed the Director of TD of its market re-entry plans in California in a meeting on July 16, 2002 as required in its letter of exemption from the Executive Director.

AT&T also states that on July 28, 2003, it implemented a system upgrade to capture Primary Line Designation (PLD) from new customers who signed up for residential local services. However, it states that the July 28, 2003 system upgrade did not allow AT&T to capture all new customers' PLD. AT&T states that a new system upgrade, scheduled to be

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<sup>8</sup> SBC also protested AL 2912 which was filed on April 13, 2004 by AT&T. The carrier requests that it be granted COLR status and authority to file claims from the CHCF-B in SBC's service territory. The AL became effective 40 days after the filing date.

<sup>9</sup> Letter from Randolph W. Deutsch to Wesley Franklin, Jr., dated July 29, 1998

<sup>10</sup> Letter from Wesley Franklin to Randolph W. Deutsch dated August 24, 1998

<sup>11</sup> Letter from Gary Beckman to All parties of R.95-01-020/I.95-01-021, dated September 11, 1998

operational on June 14, 2004, will enable it to obtain PLD for all new residential local customers.

Because AT&T did not capture PLDs for its new customers as required by the Commission's self-certification requirements, AT&T now seeks permission to send a letter to all of the High Cost Fund (HCF) non-ULTS customers informing them that their telephone line with AT&T is their primary line unless they designate otherwise, instead of obtaining certification from these customers. AT&T states that it would be too costly and burdensome for it to now go back and obtain self-certification forms from these customers. AT&T further states that ILECs were granted similar relief, which allowed them to claim CHCF-B subsidies for one non-ULTS line per address without any Customer Self Certification (CSC).

**AT&T has satisfied COLR requirements in Verizon's service territory**

In their protests to AT&T's AL 2913 and 2919 filings, both SBC and Verizon recommend that the Commission grant COLR status to AT&T, but without the contingency of UNE-P availability. SBC states that COLR rules set forth in D. 96-10-066 do not permit conditional COLR designations. Both utilities are concerned that if AT&T were designated a COLR and if UNE-P availability was subsequently eliminated, AT&T would be unable to continue as a COLR and would have to opt out of its COLR obligations by following the Commission approved procedures using the AL or the application process.

Verizon questions AT&T's ability to promote universal service in all of its service territory without complying with the customer self certification requirements of Resolution T-16018. Verizon believes that AT&T's AL does not demonstrate that AT&T offers single party local exchange service.

In its response to SBC's and Verizon's protests, AT&T states that it promotes universal service by offering local residential service via UNE-P in all of Verizon's service territory. AT&T submitted copies of relevant tariff sheets that demonstrate AT&T's offering of stand alone single party local exchange service.

AT&T utilizes UNE-P elements from the ILECs to provide local residential service. AT&T admits that if an ILEC withdraws as a COLR in a designated Census Block Group (CBG) or if UNE-P is no longer available, it would be unable to continue providing residential service to its customers and as a consequence, it would be unable to continue as a COLR. AT&T has indicated that if it were the only remaining COLR in a designated CBG and UNE-P was not available, it would file an application to withdraw as a COLR with the Commission and comply with the requirements of D. 96-10-066, Appendix B, Rule D.7. AT&T states that it would continue to provide local exchange services until its application to withdraw is granted by the Commission.

AT&T provides UNE-P based local exchange services to its customers throughout Verizon's service area as a CLEC. This arrangement satisfies the criteria for providing

basic service and of promoting the goals of universal service. AT&T has satisfied the COLR requirements of D. 96-10-066, Appendix B, Rule 6.D.4. Therefore, TD recommends that AT&T be granted COLR status in Verizon's service territory.

**No Commission Procedure Exists For Obtaining Subsidy Reimbursements from CHCF-B in Verizon's Service Areas**

Although the Commission, in D. 03-03-033 <sup>12</sup>, adopted interim rates for Verizon's UNEs, the Commission did not establish a procedure for calculating subsidy reimbursements from the CHCF-B for COLRs providing local exchange services operating on a UNE-P platform in Verizon's service territory. In addition, there is no other Commission decision or otherwise which sets forth such a procedure similar to D. 02-02-047 for SBC's service territory to date.

For these reasons, TD recommends that AT&T not be granted authority to request and obtain subsidy reimbursements from the CHCF-B until the Commission addresses and establishes a procedure for it to follow.

**AT&T is not in compliance with Commission directives**

In its protest to AL 2919, SBC states that permitting conditions that AT&T seeks not only circumvent the established process for withdrawing as a COLR but would open the door to other conditions for requesting a COLR designation. One such condition is seeking exemption from the CPL certification requirements from customers as required by Resolution T-16018.

The CPL certification is required for all new non-ULTS customers who sign up for local residential service with AT&T. The only exceptions are ULTS customers and those customers who signed up for residential local exchange service up until July 28, 1998, <sup>13</sup> the day an exemption was granted to AT&T.

AT&T states that it recommenced offering local exchange service on August 11, 2002 and on December 9, 2003 in SBC's and Verizon's service territories, respectively, without complying with the CPL requirements of Resolution T-16018. TD assumes that no new local exchange service customers were added by AT&T between July 28, 1998 and the date of recommencement of service as a result of AT&T's marketing efforts.

AT&T is not in compliance with the terms of the exemption granted by the Executive Director for all of its non-ULTS customers that it signed up for service because it did not obtain the CPL certifications from these customers as required by Resolution T-16018.

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<sup>12</sup> Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

<sup>13</sup> December 15, 1997 was the cut-off date established by the Commission for other ILECs.

Public Utilities Code Section 2107 states:

Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500) nor more than twenty thousand dollars (\$20,000) for each offense.

TD recommends that, pursuant to PU Code section 2107, AT&T be penalized for not complying with the CPL certification requirements of Resolution T-16018 and Commission directives. TD recommends that another Resolution be drafted for the Commission's consideration for the penalty amount that should be imposed on AT&T.

### **CHCF-B UNE-P claim limitations**

Decision 02-02-047 imposes limitations on the amounts that can be claimed from the CHCF-B by CLECs using UNE-P in SBC's service territory. In that Decision, the Commission stated that UNE-P based claims in SBC's territory do not "... change the level of funding necessary to support universal service". Thus, UNE-P based claims may not exceed the total funding in SBC's service territory for a particular claim month for all CLECs who file a claim. The same guiding principle should be applicable to all claims filed in Verizon's service territory under UNE-P.

TD recommends that the Commission re-emphasize the limitation of UNE-P based claims from COLRs in Verizon's and SBC's service territories.

### **CHCF-B claims in overlapping service territories**

The Commission's CSC rules state that only one CPL may be claimed for each customer. A customer information database (database) of all claims in overlapping service territories needs to be established and maintained to prevent potential duplicate claim payments to carriers. Since CHCF-B claimants do not have access to competitor customer information, TD should collect and review such information. CHCF-B claimants will need to populate the database using a format and manner of transmission to be established by TD. Claim payments for duplicate claims should be withheld pending a determination of the carrier that should be paid for those lines. No interest on withheld amounts should be due until staff investigation has been completed.

TD recommends that the Commission request all CHCF-B claimants to work with TD to develop and continually update the customer claims database.



**AT&T should be current in its Public Program surcharge remittance obligations**

All certificated telecommunications carriers are required to bill and collect the all-end-user surcharges. These surcharges are assessed on consumers' bills for intrastate telecommunications services. The carriers are then required to remit the surcharges as directed by the Commission. AT&T is a certificated carrier, which provides local exchange telephone service in California. Therefore, AT&T is required to remit its end-user surcharges to the Commission on a timely basis. Similarly, to the extent that AT&T's subsidiaries are certificated carriers that provide intrastate telecommunications services in California, they are then also required to collect the end-user surcharges and remit them to the Commission.

TD recommends that the Commission require AT&T and its subsidiaries to be current in their Public Program surcharge remittance obligations before payments from any public purpose programs are made.

**NOTICE OF AVAILABILITY AND COMMENTS**

In the past, the Commission has served a hard copy of resolutions on telecommunications carriers and parties on the service list of R.95-01-020/I.95-01-021. In compliance with PU Code Section 311 (g) and to be consistent with the Commission's commitment to utilize the Internet for distributing Commission orders and information, the TD, by letter, has informed the CHCF-B claimants, the CHCF-Administrative Committee, ILECs, CLECs, and the parties on the service list of R.95-01-020/I.95-01-021 of the availability of this draft resolution as well as the conformed resolution, when adopted by the Commission on the Commission's website, [www.cpuc.ca.gov](http://www.cpuc.ca.gov). This notice of availability letter was mailed on August 24, 2004.

Comments that are received on a timely basis will be addressed by TD in this resolution.

**FINDINGS**

1. AT&T Communications of California, Inc (AT&T) filed Advice Letter (AL) 2913 seeking a Carrier of Last Resort (COLR) status in Verizon's Service Territory pursuant to Decision 96-10-066 and an authority to obtain subsidy reimbursement from the California High Cost Fund (CHCF) –B in Verizon's service territory.
2. AT&T offers tariffed stand-alone single party residential local exchange service via Unbundled Network Elements – Platform (UNE-P). AT&T states that it recommenced its offering of the local residential services in SBC's service territory on August 11, 2002 and in Verizon's service territory on December 9, 2003.

3. AT&T plans to discontinue marketing for new customers in the residential market in California. However, it states that it will continue to support its existing UNE-P based customers.
4. AT&T has indicated that if UNE-P is unavailable, it will file an application to withdraw as a COLR as required by D. 96-10-066, Appendix B, Rule 6.D.7
5. UNE-P- based local exchange service is an acceptable arrangement for providing basic local exchange service.
6. AT&T has satisfied the goal of promoting universal service to all customer segments throughout Verizon's service territory and has satisfied the requirements of being designated a COLR pursuant to Decision (D.) 96-10-066, Appendix B, Rule 4. AT&T should be granted COLR status in Verizon's service territory.
7. The Commission, in D. 03-03-033, adopted interim rates for Verizon's unbundled network elements (UNE), but did not establish a subsidy formula for CHCF-B withdrawals for COLRs operating on a UNE-P platform in Verizon's service territory.
8. AT&T may not file CHCF-B claims in Verizon's service territory until the Commission addresses and establishes a procedure for making claims and calculating subsidy reimbursements.
9. According to D. 02-02-047, the CHCF-B monthly claims for CLEC's and SBC's service territory may not exceed the previously claimed amount by SBC for that month. The same guiding principle should be applicable to Verizon's and all other ILEC service territories.
10. AT&T filed AL 2919 seeking an exemption from the CPL certification requirements for non-Universal Lifeline Telephone Service (ULTS) customers who signed up for consumer local service prior to June 14, 2004.
11. AT&T stopped soliciting for new local exchange service customers after July 28, 1998. Prior to that date, AT&T offered local exchange service in SBC and Verizon's service territories as a reseller.
12. AT&T requested and received from the Commission's Executive Director, an indefinite extension of time effective July 28, 1998, to implement the CPL certification requirements as enumerated in Resolution T-16018. A condition for the indefinite extension was that, upon re-entering the California residential local exchange market, AT&T would fully comply with the CPL certification requirements of Resolution T-16018.
13. AT&T accepted the terms under which it was granted the indefinite extension.

14. A CPL certification is required from all new non-ULTS customers who signed up for service with AT&T after it re-entered the local exchange market in California on August 11, 2002.
15. Upon re-entering the consumer local exchange service market, AT&T did not obtain the CPL customer certification from new customers as required by Resolution T-16018.
16. AT&T seeks permission to send a letter informing new customers that their telephone line is a CPL unless the customer designates otherwise in lieu of following the procedures established by Resolution T-16018.
17. The alternative form of customer notification does not conform with the CPL certification requirements of Resolution T-16018. AT&T's proposed alternative form of notification should be denied.
18. AT&T is not in compliance with the CPL certification requirements listed in Resolution T-16018. The period of non-compliance is from August 11, 2002 through June 14, 2004 for SBC and from December 9, 2003 through June 14, 2004 for Verizon's service territories.
19. Public Utilities Code section 2107 allows penalties to be imposed on utilities that are non-compliant with Commission directives.
20. TD should draft a Resolution for Commission consideration with the amount of penalty to be imposed on AT&T for non-compliance with Commission directives.
21. A database with customer information in overlapping service territories should be established to identify and track duplicate customers for CHCF-B claims.
22. Utilities generally do not have access to other utilities' customer information due to privacy/confidentiality and competitive reasons. To maintain confidentiality, Commission staff should be responsible for reviewing and identifying potential duplicate claims.
23. CHCF-B claimants should be requested to populate and update the customer data base per requirements of TD staff.
24. AT&T and its subsidiaries should be current in their Public Program surcharge remittance obligations before payments from any public purpose programs are initiated.
25. TD's recommendations as stated in this Resolution are reasonable and should be adopted.

**THEREFORE, IT IS ORDERED that:**

1. AT&T's request for COLR status in Verizon's service territory is granted.
2. AT&T shall not file claims for subsidy from the CHCF-B in Verizon's service territory until the Commission establishes a procedure for subsidy reimbursement claims and adopts a subsidy reimbursement formula for CLECs providing UNE-P based local exchange services in Verizon's service territory.
3. AT&T's request for exemption from the Customer Primary Line (CPL) certification obligations of Resolution T-16018 is denied.
4. AT&T shall furnish TD with a list of all non-ULTS customers who it did not obtain a self-certification form from as required by Resolution T-16018 from August 11, 2002 through June 14, 2004 and December 9, 2003 through June 14, 2004 for SBC's and Verizon's service territories, respectively. This information shall be provided to TD within 30 days from the effective date of this Resolution.
5. TD shall recommend suitable remedies for non-compliance by AT&T through another resolution presented for Commission adoption.
6. TD shall inform AT&T of any outstanding Public Program surcharge remittances for end user surcharges that are due from AT&T and its subsidiaries no later than 60 days from the effective date of this Resolution.
7. No public purpose program claims shall be paid to AT&T until it is current with its Public Program surcharge remittance obligations.
8. TD shall set up and maintain, with data input provided by all CHCF-B claimants, a database to identify and track duplicate CHCF-B claims in overlapping territories.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on September 23, 2004. The following Commissioners approved it:

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STEVE LARSON  
Executive Director